IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.09.2007

Coram:-

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice R.REGUPATHI

Habeas Corpus Petition No.910 of 2007

Sampath @ Elumalai @ Aadu ... Petitioner

vs.

1. The Secretary to the Government,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2. The Commissioner of Police,
Greater Chennai. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus as stated therein.

For Petitioner : Ms.V.Vanitha
For Respondents : Mr.P.Kumaresan,
Additional Public Prosecutor.

O R D E R

(Delivered by R.REGUPATHI, J.)

The petitioner by name Sampath @ Elumalai @ Aadu challenges the impugned order of detention, dated 14.03.2007, whereby, he has been detained as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. The order of detention dated 14.03.2007 came to be passed on the basis of the ground case in Crime No.360 of 2007, for alleged commission of offences under Sections 341, 336, 397, 427 and 506 (2) IPC. The allegation is that, on 14.02.2007, at 17.00 hours, one Ayyappan was proceeding by walk at the junction between Kaliamman Koil Street and Yadhaval Street, at which time, the petitioner/detenu, who came in a motorcycle, wrongfully restrained

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Ayyappan. On Ayyappan questioning his action, he threatened him and demanded money from him and when Ayyappan replied that he had no money, the detenu at knife point, inserted his hand into the shirt pocket of Ayyappan, took away Rs.300/-, also relieved of his wrist watch and tried to escape. On hearing the scream of Ayyappan, the public, who were at the spot, came to his rescue. The detenu hurled bottles against them and, as a result of his violent activities, the normalcy in the area was greatly affected and the public ran to safer places out of fear of danger to their lives and properties, and the nearby shops were shuttered. Ultimately, the police, who were on rounds, reached there and arrested the detenu with the help of the public. The case, as referred to above, has been registered on the file of the Inspector of Police, R5 Virguambakkam Police Station, on the basis of the complaint lodged by the said Ayyappan. The Detaining Authority, taking note of six adverse cases pending against the detenu and considering his incessant activities, prejudicial to the maintenance of public order, clamped the detention order on him.

3. In this Petition, the petitioner seeks for the issuance of a writ of Habeas Corpus to call for the records in connection with the order of detention passed against him by the 2nd respondent, dated 14.03.2007, in Memo No.89/BDFGISV/2007, quash the said order, direct the respondents to produce him before this Court and set him at liberty.

4. We have perused the materials available on record and considered the submissions made by the counsel appearing on either side.

5. On examining the records, we find that, while making remand requisition before the IX Metropolitan Magistrate, Saidapet, Chennai-15, the Sponsoring Authority referred to adverse case Nos.3 and 4 in Cr. Nos.1371 of 2006 and 39 of 2007 respectively and also the ground case in Cr. No.360 of 2007, however, remand order was passed only in respect of the ground case. Apart from that, the detention order states that there is real possibility of the detenu coming out on bail by filing bail application, while the fact remains that there are no details available on record to show whether or not the detenu was remanded in respect of those adverse cases also by independent orders of the Magistrate. Therefore, we are of the view that the subjective satisfaction arrived at by the Detaining Authority is vitiated as a result of non-application of mind on the part of the Detaining Authority to the above fact. Consequently, the impugned order of detention is liable to be quashed.

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Accordingly, the Habeas Corpus Petition is allowed and the order of detention passed by the second respondent in the proceedings dated 14.03.2007 against the petitioner/detenu is quashed the and the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Govt., Prohibition & Excise Department,
Secretariat, Chennai 600 009.

2. The Commissioner of Police, Greater Chennai,
Egmore, Chennai 600 008.

3. The Superintendent of Central Prison, Puzhal, Chennai

4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr. V. Vanitha, Advocate SR No. 59889

HCP No.910 of 2007.

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SR/11.10.2007

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